

**BEFORE THE KANSAS BOARD OF PHARMACY**

In the Matter of

Case No. 15-090

ENCLARA PHARMACIA, INC.,

f/k/a ExcelleRX, Inc.

Kansas Registration Nos. 22-44646

22-02365

**STIPULATION AND CONSENT ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the Kansas Pharmacy Board (the "Board") and Enclara Pharmacia, Inc. f/k/a ExcelleRX, Inc. ("Respondent") as follows:

1. The Board is represented herein by its attorney, Randall J. Forbes of Frieden, Unrein & Forbes, LLP, 1414 SW Ashworth Place, Suite 201, Topeka, Kansas 66604. The Respondent is represented herein by its attorney,

2. The Board is the Kansas agency vested with the authority to carry out and enforce the provisions of the Kansas Pharmacy Law, K.S.A. §§ 65-1626 *et seq.*, (the "Act") including conducting hearings and proceedings to revoke, suspend or otherwise discipline a Kansas registration to operate a pharmacy.

3. The Respondent is presently entitled to operate a pharmacy in the State of Kansas by reason of the Board having issued it Kansas registration number 22-44646 ("Kansas Registration"). At all times relevant hereto, the Respondent has held a current registration to operate a pharmacy in the State of Kansas. Respondent has formerly been known as ExcelleRx, Inc. with Kansas registration number 22-02365.

4. The Board's Investigation Member has received certain information, investigated and determined that there are reasonable grounds to believe that Respondent has operated in a manner that violates the Act.

5. Respondent hereby admits and waives any further proof in this or any other proceeding before or initiated by the Board, and upon motion duly made, seconded and passed, the Board finds the following:

A. On or about October 2, 2007, Respondent entered into a civil consent decree with the United States Government Drug Enforcement Administration relating to Respondent's dispensing of approximately seven thousand (7,000) Schedule II controlled substances to hospice patients prior to obtaining a physician's authorized signature and/or without meeting the emergency authorization procedure established under 21 C.F.R. § 290.10. (the "October 2, 2007 Civil Consent Decree"). In the October 2, 2007 Civil Consent Decree, Respondent neither admitted nor denied liability. Respondent agreed to pay a civil fine of \$540,000.00. Accordingly, Respondent has been subject to discipline in a number of jurisdictions based upon the October 2, 2007 Civil Consent Decree.

B. On or about September 13, 2011, Respondent entered into a Consent Order with the Tennessee Board of Pharmacy relating to the October 2, 2007 Civil Consent Decree (the "Tennessee Order"). A true and correct copy of the Tennessee Order is attached hereto as Exhibit A and incorporated herein by this reference.

C. Pursuant to the Tennessee Order, Respondent's Tennessee License was placed on probation for five (5) years to end on September 13, 2016 and required to comply with all other terms and conditions of the Tennessee Order.

D. On or about October 23, 2012, Respondent entered into a Consent Agreement with the State of Maine Board of Pharmacy relating to the October 2, 2007 Civil Consent Decree and failure to disclose the same to the Maine Board in applications for renewal submitted in November and December of 2007 (the "Maine Order"). A true and correct copy of the Maine Order is attached hereto as Exhibit B and incorporated herein by this reference.

E. Pursuant to the Maine Order, Respondent was issued a warning from the Maine Board as a sanction for its failure to disclose and fined in the amount of \$2,000.00.

F. On or about December 13, 2013, Respondent entered into a Findings of Fact, Ultimate Findings of Fact, Conclusion of Law and Order with the Indiana Board of Pharmacy relating to the October 2, 2007 Civil Consent Decree and failure to disclose the October 2, 2007 Civil Consent Decree and the Tennessee Order and Maine Order (the "Indiana Order"). A true and correct copy of the Indiana Order is attached hereto as Exhibit C and incorporated herein by this reference.

G. Pursuant to the Indiana Order, Respondent was issued a Letter of Reprimand and fined \$250.00 per license and required to comply with all other terms and conditions of the Indiana Order.

H. On or about November 4, 2014, Respondent entered into a Stipulated Settlement and Disciplinary Order for Public Reprimand with the State of California Board of Pharmacy Department of Consumer Affairs relating to the October 2, 2007 Civil Decree, Tennessee Order, Maine Order and Indiana Order (the "California Order"). A true and correct copy of the California Order is attached hereto as Exhibit D and incorporated herein by this reference.

I. Pursuant to the California Order, Respondent was issued a letter of public reproof and ordered to pay the California Board's investigation and enforcement costs in the amount of \$467.00.

J. On or about February 10, 2015, Respondent entered into a Settlement Agreement Between State Board of Pharmacy and Excellerx, Inc. relating to the October 2, 2007 Civil Consent Decree along with the Tennessee Order and the Indiana Order (the "Missouri Order"). A true and correct copy of the Missouri Order is attached hereto as Exhibit E and incorporated herein by this reference.

K. Pursuant to the Missouri Order, Respondent's Missouri drug distributor permit was placed on probation until September 13, 2016 and required Respondent to self-report to the Missouri Board every six months regarding its Missouri permit status, make a corporate representative available for questioning by a Missouri Board member and comply with all other terms and conditions of the Missouri Order.

L. On or about June 10, 2015 Respondent entered into a Consent Order and Stipulation with the State of Michigan Department of Licensing and Regulatory Affairs Bureau of Health Care Services Board of Pharmacy Disciplinary Subcommittee relating to the October 2, 2007 Civil Consent Decree, the Tennessee Order, the Maine Order, a New Hampshire Notice of Apparent Liability entered on or about January 22, 2013, the California Order and the Missouri Order (the "Michigan Order"). A true and correct copy of the Michigan Order is attached hereto as Exhibit F and incorporated herein by this reference.

M. Pursuant to the Michigan Order, Respondent was fined \$4,000.00 and ordered to comply with all other terms and conditions of the Michigan Order.

N. Respondent self-reported the October 2, 2007 Civil Consent Decree, Michigan Order and other state orders to the Board on or before July 10, 2015.

6. Respondent agrees that if the allegations contained in paragraph 5 above were proven true at a hearing, then these allegations would constitute grounds for discipline of Respondent's pharmacy license in the State of Kansas.

7. Upon motion duly made, seconded and passed, the Board finds and concludes that the events described in paragraph 5 above, constitute the operation of a pharmacy in a manner that violates the Act and the Regulations of the Board and is therefore grounds for disciplinary action against the Respondent's Kansas Registration pursuant to K.S.A. § 65-1627(e)(4).

8. The Respondent agrees and consents and the Board finds concludes and orders that the following non-disciplinary disposition is just and appropriate under the circumstances:

A. COMPLIANCE WITH OTHER STATE ORDERS. Respondent agrees and consents and the Board further orders that Respondent shall fully comply with all terms, conditions, limitations and other requirements of the Tennessee Order, the Maine Order, the Indiana Order, the California Order, the Missouri Order and the Michigan Order (the "State Orders").

Respondent further agrees and consents and the Board further orders that Respondent shall notify the Board of any communications, notices, investigations, complaints or actions relating to or arising out of the State Orders, and Respondent shall furnish the Board with any and all communications or notices furnished to the other state boards arising out of or relating to the State Orders.

B. OTHER REQUIREMENTS. Respondent acknowledges and agrees that as a condition of this Stipulation and Consent Order it must, and the Board further orders the Respondent to:

1. Comply fully with this Stipulation and Consent Order;
2. Comply fully with the Kansas Pharmacy Act, the Board's rules and regulations;
3. Comply fully with all state and federal laws relating to pharmacy practice; and
4. Pay the Board's investigation, administrative and enforcement costs for this matter in the amount of Five Hundred Dollars (\$500.00). This does not constitute a fine.

9. Respondent agrees that all information in the possession of the Board's Investigation Member, its staff, its investigators and or its attorney regarding the investigation which lead to this Stipulation and Consent Order and all information discovered during the pendency of the same may be disclosed to and considered by the Board as part of the presentation and consideration of the proposal of settlement in the form of this Stipulation and Consent Order and the Final Order provided for herein, with or without the presence of the Respondent or its attorney. In the event that this Stipulation and Consent Order and the Final Order provided for herein are not accepted and approved by the Board, the Respondent further waives any objection to the Board members' consideration of this Stipulation and Consent Order or the information mentioned in the preceding sentence and further agrees to waive any claim of due process violation or the right to seek the disqualification of any Board member as a result of the Board member's consideration of said document and information.

10. The stipulations contained herein shall not become binding until this Stipulation and Consent Order is approved by the Board and the Final Order provided for herein is entered by the Board. The Respondent acknowledges that the approval of the Board's Investigation Member or its attorney shall not constitute the approval of the Board or bind the Board to approve this Stipulation and Consent Order.

11. The Respondent agrees that this Stipulation and Consent Order is in conformance with Kansas and federal law and the Board has jurisdiction to enter into it and enter the Final Order provided for herein. The Respondent further agrees, for purposes of this matter, that the Kansas Pharmacy Act, K.S.A. §§ 65-1626 *et seq.* is constitutional on its face and as applied in this case.

12. This Stipulation constitutes the entire agreement of the parties and may only be modified by a subsequent writing signed by them. The agreement shall be interpreted in accordance with the laws of the State of Kansas.

13. The Respondent acknowledges that it has the following rights:

- (a) To have formal notice of charges served upon it;
- (b) To file a response to the charges;
- (c) To have notice of and participate in a formal adjudicative hearing with the Board or its designee making specific findings of facts and conclusions of law based only upon evidence admitted at such hearing; and

- (d) To take advantage of all applicable provisions of the Kansas Administrative Procedures Act, K.S.A. §§ 77-501 *et seq.* and the Kansas Judicial Review Act, K.S.A. §§ 77-601 *et seq.*

The Respondent freely waives these rights and acknowledges that said waiver is made voluntarily and in consideration of the Board's limiting the action taken against it to those provided for herein. The Respondent further waives the right to seek reconsideration or appeal or otherwise contest this Stipulation and Consent Order provided for herein.

14. The Respondent acknowledges that it enters into this Stipulation and Consent Order freely and voluntarily after consultation with counsel of its choosing. The Respondent further acknowledges that it has read this Stipulation and Consent Agency order in its entirety, that it understands its legal consequences and that it agrees that none of its terms are unconscionable, arbitrary or capricious.

15. Time is of the essence to this Stipulation and Consent Order. Respondent acknowledges and agrees that any violation of this Stipulation and Consent Order shall constitute a willful violation of a lawful Board order and grounds for disciplinary action against it. The pendency of any disciplinary action arising out of an alleged violation of this Stipulation and Consent Order shall not affect the obligation of Respondent to comply with all terms and conditions of this Stipulation and Consent Order.

16. This Stipulation and Consent Order constitutes the entire and final agreement of the parties. In the event any provision of this Stipulation and Consent Order is deemed invalid or unenforceable by a court of competent jurisdiction, it shall be severed and the remaining provisions of this Stipulation and Consent Order shall be given full force and effect.

17. Upon approval and entry of the Final Order by the Board, this Stipulation and Consent Order shall be a public record in the custody of the Board.

18. This Stipulation and Consent Order shall become effective on the day it is approved, accepted and made an order of the Board by way of signature of the Board's authorized representative.

19. The Respondent acknowledges that it has been advised by the Board that it would have the right within 15 days after service of the Final Order provided for herein to file a petition for reconsideration with the Board and the right within 30 days after service of the Final Order provided for herein to file a petition for judicial review in the District Court of Shawnee County, Kansas in accordance with the Kansas Judicial Review Act, K.S.A. §§ 77-601 *et seq.* and to serve such a petition for judicial review on the Kansas Board of Pharmacy by serving Carly Haynes, its Acting Executive Secretary at 800 SW Jackson St., Suite 1414, Topeka, KS 66612. The Respondent hereby waives those rights.


ENTERED AND EFFECTIVE this 19<sup>th</sup> day of May, 2016.

KANSAS BOARD OF PHARMACY

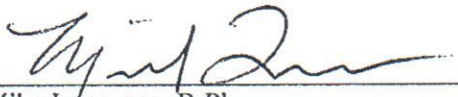
By:   
DR. ROBERT HANEKE, President

AGREED AND APPROVED BY:

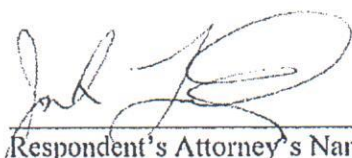
Enclara Pharmacia, Inc.

By:   
Scott Baach, Secretary

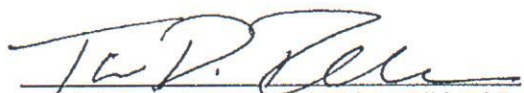
1/28/2016  
Date

  
Mike Lonergan, R.Ph.  
Investigation Member

5-18-16  
Date

  
Respondent's Attorney's Name & Address  
1601 Cherry St Ste 1700  
Philadelphia PA 19102

1/23/16  
Date

  
Randall J. Forbes, KS#09089 MO#64335  
Timothy D. Resner, #25064  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604  
(785) 354-1100  
(785) 354-1113 (fax)  
Attorneys for the Kansas Board of Pharmacy

2/10/16  
Date


**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing STIPULATION AND CONSENT ORDER was served by depositing same in the United States mail, postage prepaid, this 19<sup>th</sup> day of May, 2016 addressed to:

Randall J. Forbes  
Timothy D. Resner  
FRIEDEN, UNREIN & FORBES, LLP  
1414 SW Ashworth Place, Suite 201  
Topeka, KS 66604

Enclara Pharmacia, Inc.  
2525 Horizon Lake Drive, Suite 101  
Memphis, TN 38133

Enclara Pharmacia, Inc.  
c/o Scott Baach, EVP, Chief Administrative Officer  
and General Counsel  
1601 Cherry Street, Suite 1700  
Philadelphia, PA 19102

  
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Alexandra Blasi  
Executive Director  
KANSAS BOARD OF PHARMACY